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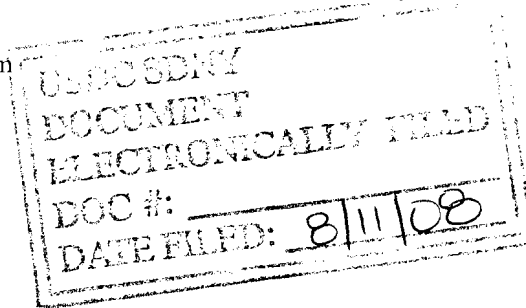
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August 8, 2008

Via Federal Express

Honorable Richard M. Berman
United States District Judge
Southern District of New York
40 Centre Street, Courtroom 706
New York, NY 10007

MEMO ENDORSED
p. 2

Re: *Resch, et al v. Beachcomber USA, Inc., et al*, Case No. 1:08-cv-06064-RMB
Defendants' Request for Pre-Motion Conference for a Motion to Dismiss

Dear Judge Berman:

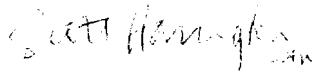
Our office represents the Defendants in the above-referenced matter. The purpose of this letter is to express the Defendants' intent to file a motion to dismiss under Rule 12(b)(6) in the above-referenced matter. Pursuant to Rule 2 regarding Motions, found in the Individual Practices of Honorable Richard M. Berman, we are requesting a pre-motion conference to discuss our position.

We have researched and are prepared to file a motion to dismiss counts IV and V of the Complaint asserting causes of action sounding in unjust enrichment, as well as Count VI seeking equitable remedies of rescission and an accounting. The allegations in the Complaint, incorporating these counts, acknowledge the existence of valid contracts. In our proposed

motion, we intend to argue that quasi-contractual causes of action cannot be maintained when there is an allegation of the existence of a valid contract. Therefore, said counts fail to state claims upon which relief may be granted. Furthermore, Count IV, which asserts equitable claims of rescission and an accounting, is legally insufficient in that it fails to contain essential allegations necessary to obtain such relief. We will also seek to dismiss the portion of the prayer for relief seeking punitive damages, as we do not believe any of Plaintiffs' causes of action support a claim for punitive damages.

We respectfully request a pre-motion conference on our proposed Motion to Dismiss pursuant to Your Honor's Individual Practices. Thank you for your consideration

Very Truly Yours,



Scott M. Harrington, Esq.

Cc: Timothy Ronan, Esq
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<u>Plaintiff to respond with 2-3 page</u> <u>letter by 8/18/08 (noon). We can</u> <u>discuss the proposed motion at the</u> <u>conference on 8/20/08 at 9:15 a.m.</u>	
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SO ORDERED: Date: <u>8/11/08</u>	<u>Richard M. Berman</u> Richard M. Berman, U.S.D.J.